

**Objection to the Issuance of Construction Permit
Cadillac Drive Sanitary Sewer Extension Permit Approval #19694
Fort Wayne, Allen County, Indiana
2010 OEA 168, (10-W-J-4375)**

OFFICIAL SHORT CITATION NAME: When referring to 2010 OEA 168 cite this case as
Aqua Indiana, Inc., 2010 OEA 168.

TOPICS:

hearing
sanitary sewer
need
costs

PRESIDING JUDGE:

Catherine Gibbs

PARTY REPRESENTATIVES:

IDEM: Denise Walker, Esq.
Petitioner: W.F. Quinn, pro se
Permittee: Philip B. McKiernan, Esq., Joseph M. Hendel, Esq.; Hackman Hullett & Cracraft

ORDER ISSUED:

October 15, 2010

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

**Objection to the Issuance of Construction Permit
Cadillac Drive Sanitary Sewer Extension Permit Approval #19694
Fort Wayne, Allen County, Indiana
2010 OEA 168, (10-W-J-4375)**

conference, at the request of the Petitioner, this case was set for a final hearing on October 8, 2010. A hearing was held on this date. All parties appeared; evidence and testimony was presented.

4. The Petitioner, in the hearing and his petition for review, objects to the Permit on the basis that the Permittee has not shown a need for the sewer. He also objects to the costs associated with the construction.

Applicable Law

The Indiana Department of Environmental Management (IDEM) is authorized to implement and enforce specified Indiana environmental laws and rules promulgated relevant to those laws, pursuant to I.C. § 13. The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to this controversy pursuant to I.C. § 4-21.5-7-3.

The Petitioner has the burden to prove that the IDEM erred in issuing this Permit. That requires presenting proof that the IDEM or the Permittee failed to comply with all of the applicable requirements. The requirements for sanitary sewers are found in 327 IAC 3. In making the determination to issue the Permit, the IDEM may only consider whether the plans and specifications for the sewer system meet these regulations. Therefore, the Petitioner must specify which regulation the sewer system does not meet.

There is no requirement in 327 IAC 3 that a permit applicant must show that a need exists before being granted a construction permit. Further, there is no requirement that IDEM must consider the financial impact on affected parties in determining whether it is proper to issue a permit.

CONCLUSIONS OF LAW

1. The Petitioner testified that his septic system had not failed and there was no need for a sanitary sewer system at his property. He further testified that he did not have the financial resources to pay for his portion of the construction costs. He was unable to identify any other alleged deficiencies in the Permit.
2. Neither of these things must be considered by the IDEM in deciding whether to issue a construction permit.
3. In this instance, the Petitioner has been unable to show that the Permit is deficient. The Petitioner has failed to meet his burden of proof that the IDEM erred in issuing this Permit. Judgment in the IDEM’s and the Permittee’s favor is appropriate.

**Objection to the Issuance of Construction Permit
Cadillac Drive Sanitary Sewer Extension Permit Approval #19694
Fort Wayne, Allen County, Indiana
2010 OEA 168, (10-W-J-4375)**

FINAL ORDER

AND THE COURT, being duly advised, hereby **ORDERS, ADJUDGES AND DECREES** that judgment is entered in favor of the Indiana Department of Environmental Management and Aqua Indiana, Inc. The Petition for Review is **DISMISSED**. All further proceedings are **VACATED**.

You are hereby further notified that pursuant to provisions of I.C. § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of I.C. § 4-21.5. Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 15th day of October, 2010 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge